



September 9, 2015

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 10-71 and 13-249

Dear Ms. Dortch:

On Tuesday, September 1, 2015, Senator Gordon H. Smith and the undersigned of the National Association of Broadcasters (NAB) met with Commissioner Ajit Pai and his chief of staff, Matthew Berry, and his interim legal advisor, Alison Nemeth; Commissioner Mike O’Rielly and his chief of staff, Robin Colwell; and Commissioner Jessica Rosenworcel and her policy advisor, Valery Galasso, to discuss Chairman Wheeler’s push to eliminate the Commission’s network non-duplication and syndicated exclusivity rules (together the “exclusivity rules”) and his decision not to include an exclusive window for AM stations to obtain FM translators as part of the AM revitalization order.

During the meetings, NAB explained that, if adopted, both items would deal independent blows to localism. Together, they represent a wholesale shift in longstanding Commission and Congressional policy, which supports and fosters local broadcasting. The FCC should abandon this steady march towards dismantling the carefully constructed system of localized radio and television broadcasting across the nation.

With respect to the exclusivity rules, the public has yet to hear a meaningful rationale as to why the rules should be discarded. The lone justification appears to be that the rules are outdated. There has been no serious explanation beyond that. No notion that they are bad for consumers or create a burden on the agency. They are simply old. While that reasoning might be appropriate for a rule that serves no purpose – i.e., one that is superfluous – it does not hold water for the exclusivity rules that are clearly still relevant in fostering localism and creating an efficient marketplace. In fact, the rules are more relevant than ever today, given the unparalleled MVPD consolidation and the sheer size and market power of many of the companies in the pay-TV business.

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It is a testament to the rules' continued importance that so many broadcasters from markets big and small around the entire country have flown in over the past two weeks to implore the Commission to maintain the rules. Local broadcasters cannot reliably protect themselves from cable encroachments by contract alone. Beyond the high cost of even routine litigation, the lack of privity alone undermines a broadcaster's ability to effectively enforce its bargained-for exclusivity. And given that the FCC has a vested interest in localism, maintaining its simple and effective exclusivity rules help bridge that gap between contract and meaningful enforcement.

NAB also discussed how the FCC should not undermine exclusivity given Congress's recent and past actions in the field. First, Congress, and not the FCC, has the ability to adjust the entire compulsory copyright/exclusivity regime. Given that the FCC can only change one small piece of that longstanding, carefully crafted balance, it should leave any changes to Congress. By proposing to eliminate the exclusivity rules, the Chairman is merely proposing to exacerbate Congress's subsidy to cable in the form of the distant signal and local compulsory licenses that will remain in place. In addition, Congress just recently reaffirmed its commitment to the local exclusivity paradigm in the satellite context as part of the STELA reauthorization. It defies logic why the FCC would move now – of all times – to repeal the exclusivity rules for cable when Congress just reenacted them for DBS providers.

In terms of AM revitalization, NAB noted that, without the exclusive window for AM stations to apply for FM translators, the Commission could no longer claim that it is “revitalizing” the AM band. The window is critical for small market broadcasters in particular who are attempting to serve their local communities. Radio, as much as any other medium, is local. Without the ability to reach listeners, many stations can no longer survive in this incredibly competitive marketplace.

It has been suggested that one rationale for not fully revitalizing AM radio is a view held by some that the AM band somehow lacks a diversity of viewpoints. Apart from the fact that developing policy on this content-based view would turn the First Amendment on its head, it is just plain wrong. AM radio is incredibly diverse in content and is more diverse than nearly every other medium in terms of ownership. The attached presentation clearly demonstrates the diversity of AM radio.

There certainly appears to be an increasing hostility towards localism – whether by design or accident – at the Commission. The steady stream of actions that cut at the heart of local broadcasting has significant consequences for the American people, especially when it comes to informing local communities and overall civic engagement. We live in a vast country that exists far beyond Washington, D.C., and one that relies heavily on local radio and TV broadcasters for critical news, information and entertainment. Just as the Commission has a laser-like focus on developing the best broadband infrastructure in the world, it should seek to foster, not inhibit or dismantle, a broadcast system that has long been the envy of the world.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal flourish extending to the right.

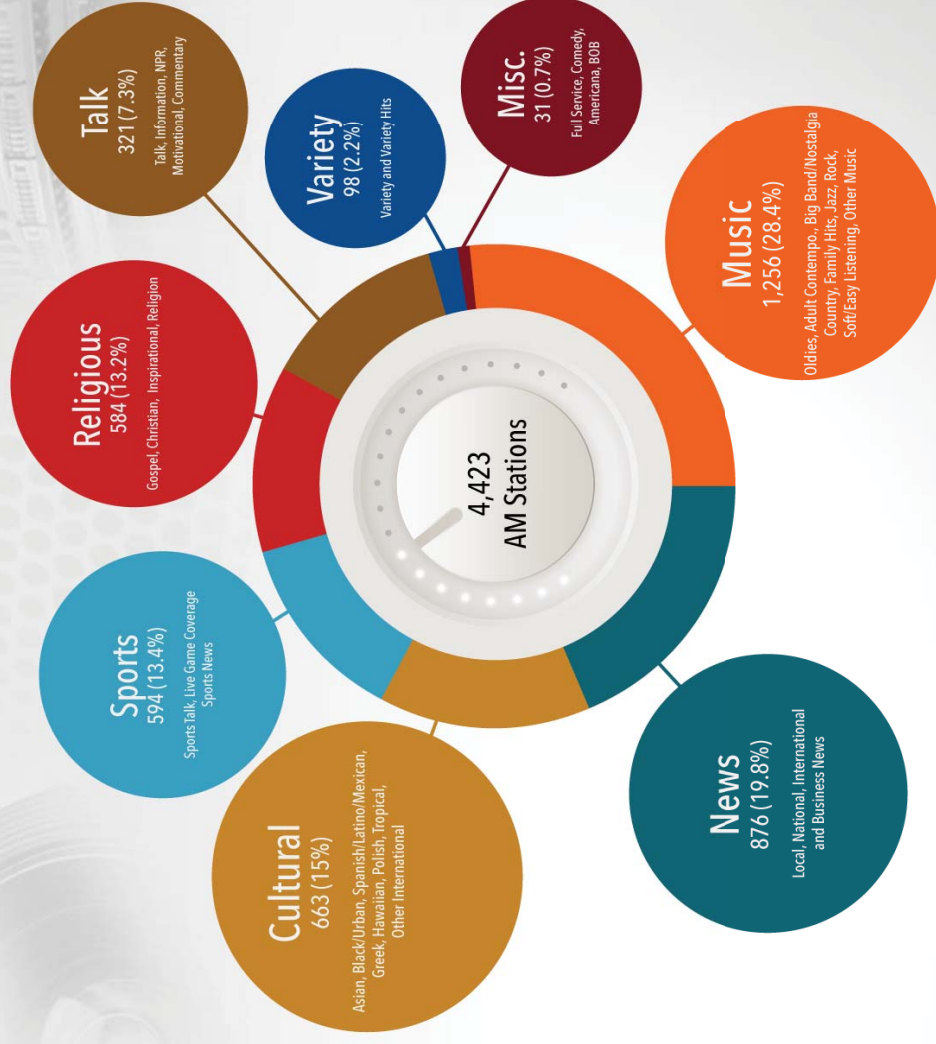
Rick Kaplan
Executive Vice President and General Counsel
Legal and Regulatory Affairs

Enclosure

cc: Matthew Berry, Alison Nemeth, Robin Colwell, Valery Galasso



AM Radio's Content Diversity



Source: NAB analysis of BIA/Kelsey database of AM stations' self-identified primary programming formats, July 2015



Gateway to Ownership

- AM radio has the lowest barriers to entry of all communications services
- Most diverse ownership:

	AM Stations Owned	Top 100 markets	Attributable Interest
Racial Minorities	225	9.5%	858
Hispanics/Latinos	194	10%	333
Females	310	7%	2,272

FCC 2014 Broadcast Ownership Report

- Over the past 30 years, numerous African Americans and Latinos entered broadcasting industry as AM station owners and have since grown into large, successful owners of AM, FM and television station groups



AM Revitalization NPRM

- AM radio faces unique technical and economic challenges
- The lead proposal: open an AM-only translator filing window
 - Extend benefits of 2009 rule change to more AM stations and AM listeners
 - Overcome interference (LED bulbs, computers)
 - Daytime-only stations can broadcast at night
 - Improve viability for hundreds of AM stations
- NPRM findings:
 - FM translators are scarce in many areas
 - AM-only window is best way to provide immediate help to AM radio service
 - AM-only window would have “no material impact” on future translator applicants
 - Prevent MX’d and speculative applications

Translator Availability

- Many AM stations cannot obtain a translator

Translator Status	Total	Percent
AM Stations with FM Translators	911	19.4
AM Stations with Zero Translators in AM Contour	719	15.3
AM Stations with Only One Translator in AM Contour	553	11.8
AM Stations with Two or More Translators in AM Contour	2512	53.5
Total Number of AM Stations	4695	100

- Only about 12% of AM stations have purchased a translator since 2009 Order

Translator Prices

- Demand > limited supply = High Prices
 - \$100,000+ in small, mid-sized markets.
 - \$250,000+ in larger markets.
 - \$1M+ in top 5 markets.
 - Translator prices often > value of AM station.
 - Prices increased again after the Chairman's blog



Stay the Course

- AM-only window remains the best way to help revitalize AM radio service
- NPRM record closed 17 months ago
- No objections to AM-only window
- Too many AM stations left on sidelines